

## Pension Benefit Guaranty Corporation

## § 4211.4

by the plan sponsor pursuant to section 305(e)(8) of ERISA or section 432(e)(8) of the Code that would otherwise have been includable as a nonforfeitable benefit for purposes of determining an employer's allocable share of unfunded vested benefits.

*Prior plan* means the plan in which an employer participated immediately before that plan became a part of the merged plan.

*Unfunded vested benefits* means an amount by which the value of nonforfeitable benefits under the plan as defined for purposes of this section, exceeds the value of the assets of the plan.

*Withdrawing employer* means the employer for whom withdrawal liability is being calculated under section 4201 of ERISA.

*Withdrawn employer* means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of ERISA. A temporary suspension of contributions, including a suspension described in section 4218(2) of ERISA, is not considered a discontinuance of contributions.

[61 FR 34097, July 1, 1996, as amended at 73 FR 79635, Dec. 30, 2008]

### § 4211.3 Special rules for construction industry and IRC section 404(c) plans.

(a) *Construction plans.* Except as provided in §§ 4211.11(b) and 4211.21(b), a plan that primarily covers employees in the building and construction industry shall use the presumptive method for allocating unfunded vested benefits.

(b) *Section 404(c) plans.* A plan described in section 404(c) of the Code or a continuation of such a plan shall allocate unfunded vested benefits under the rolling-5 method unless the plan, by amendment, adopts an alternative method or modification.

### § 4211.4 Contributions for purposes of the numerator and denominator of the allocation fractions.

Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on

contributions that certain employers have made to the plan for a five-year period.

(a) The numerator of the allocation fraction, with respect to a withdrawing employer, is based on the "sum of the contributions required to be made" or the "total amount required to be contributed" by the employer for the specified period. For purposes of these methods, this means the amount that is required to be contributed under one or more collective bargaining agreements or other agreements pursuant to which the employer contributes under the plan, other than withdrawal liability payments or amounts that an employer is obligated to pay to the plan pursuant to section 305(e)(7) of ERISA or section 432(e)(7) of the Code (automatic employer surcharge). Employee contributions, if any, shall be excluded from the totals.

(b) The denominator of the allocation fraction is based on contributions that certain employers have made to the plan for a specified period. For purposes of these methods, and except as provided in § 4211.12, "the sum of all contributions made" or "total amount contributed" by employers for a plan year means the amounts considered contributed to the plan for purposes of section 412(b)(3)(A) or section 431(b)(3)(A) of the Code, other than withdrawal liability payments or amounts that an employer is obligated to pay to the plan pursuant to section 305(e)(7) of ERISA or section 432(e)(7) of the Code (automatic employer surcharge). For plan years before section 412 applies to the plan, "the sum of all contributions made" or "total amount contributed" means the amount reported to the IRS or the Department of Labor as total contributions for the plan year; for example, for the plan years in which the plan filed the Form 5500, the amount reported as total contributions on that form. Employee contributions, if any, shall be excluded from the totals.

[73 FR 79635, Dec. 30, 2008]